

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Chris Gregerson)	No.: 06-cv-01164 (ADM/AJB)
)	
Plaintiff)	
)	
vs.)	FIRST AMENDED
)	COMPLAINT FOR
)	COPYRIGHT INFRINGEMENT
Vilana Financial, Inc., a Minnesota)	
corporation; Vilana Realty, Inc., a)	
Minnesota corporation; and)	
Andrew Vilenchik, a private individual)	
)	
Defendants)	
)	

Plaintiff, Chris Gregerson, in it's complaint against the Defendants, alleges the following:

JURISDICTION AND VENUE

- 1 This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 *et seq.*).
- 2 This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).
- 3 This Court has personal jurisdiction over all the Defendants by virtue of their office of record being located in this District, and their transacting, doing, and soliciting business in this District, and because the relevant events occurred in this District.
- 4 Venue is proper because the defendants reside and can be found in this judicial district (28 USC § 1400(a)).

PARTIES

- 5 Plaintiff is a natural person, residing at 150 N. Green Ave., New Richmond, WI, 54017.
- 6 Defendants Vilana Financial, Inc. and Vilana Realty, Inc. are Minnesota

businesses, duly incorporated in accordance with the laws of the state of Minnesota, with a registered place of business of 7008 E Fish Lake Rd, Maple Grove, MN, 55311 (upon information and belief, they are currently at 5747 West Broadway, Crystal, MN, 55428).

- 7 Upon information and belief, Andrew Vilenchik resides at 14112 53rd Ave. N, Plymouth, MN, 55446, and is the sole owner and board member of defendants Vilana Financial, Inc. and Vilana Realty, Inc.

FACTS

- 8 The Plaintiff, a professional photographer by trade, took a photograph of the Minneapolis skyline on the evening of January 8th, 2004 (exhibit A, attached).
- 9 The Plaintiff published a version of the photo on his website as image #2891. The photo was cropped and had his website address stamped in the lower-left corner. It appeared with a copyright notice underneath, and was titled "Minneapolis Skyline at Night (#2891)". It was published on Jan. 13th, 2004, at the web address:
<http://www.phototour.minneapolis.mn.us/2891> (exhibit B, attached).
- 10 The Plaintiff applied for copyright registration for the photo with the U.S. Copyright Office on June 23rd, 2005 (as part of a bulk registration for all photos published in 2004). The Plaintiff received a Certificate of Copyright Registration on Jan. 13th, 2006 (exhibit C, attached).
- 11 The Plaintiff's website is a stock photography business with a published pricing policy. The policy requires higher fees for unauthorized use than use that is authorized in advance (exhibit D, attached). This policy is repeated on each invoice the Plaintiff sends to customers in the normal course of his business licensing photos (exhibit E, attached).
- 12 The defendant(s) published a full-page advertisement on the inside cover of the 2005 Dex Plus Directory for the Twin Cities (exhibit F, attached).
- 13 The photo in the lower-left of this ad is photo #2891 from the Plaintiff's website (except the web address "www.phototour.minneapolis.mn.us" has been cropped out of the bottom and a small amount has been cropped from the top) (exhibit G, attached).
- 14 The defendants used image #2891 in a series web ads (exhibit H, attached)
- 15 Upon information and belief, the defendants used image #2891 in a series of other advertisements, including print ads in a local Russian-language newspaper, advertising brochures, and a local business directory.

- 16 The use of image #2891 by the defendant(s) was without the knowledge or consent of the Plaintiff. The Plaintiff discovered his photo in the defendant(s) Dex ad by coincidence, and notified defendant Vilana Financial, Inc. of fees due for the unauthorized use of the image in the Dex ad in a letter dated June 6th, 2005 (exhibit I, attached).
- 17 The defendant(s) made no payment(s) to the Plaintiff.
- 18 The defendant Vilana Financial, Inc. has produced a sales agreement, the "Zubitskiy photo agreement" (exhibit J, attached), which the defendant offered as proof of having lawfully purchased the rights to image #2891 from Michael Zubitskiy.
- 19 Upon information and belief, there is no person by the name Michael Zubitskiy in the United States of America (exhibit K, attached). Michael Zubitskiy did not create image #2891, never owned the rights to it, and could not legally sell the photo's copyright.
- 20 Upon information and belief, the defendant(s) obtained image #2891 from the Plaintiff's website, not Michael Zubitskiy.
- 21 All use by the defendant(s) of the Plaintiff's photograph #2891 was without the knowledge or consent of the Plaintiff, the exclusive copyright owner.
- 22 The Plaintiff, a professional photographer by trade, took a photograph of a residence in the Kenwood neighborhood of Minneapolis on 2002-08-20 (see exhibit L, attached).
- 23 The Plaintiff published a version of the photo on his website as image #2258, titled "Kenwood Residence". The photo was cropped slightly and had the website address "www.phototour.minneapolis.mn.us" stamped in the lower-left corner. It appeared with a copyright notice underneath, and was published on approximately 2002-11-23 at the web address:
<http://www.phototour.minneapolis.mn.us/2258>
- 24 The Plaintiff applied for copyright registration for image #2258 with the U.S. Copyright Office on March 4th, 2004, as part of a bulk registration for all photos published in 2002. The Plaintiff received a Certificate of Copyright Registration on April 27th, 2004 (exhibit M, attached).
- 25 On January 15th, 2007, the defendant(s) produced a black and white copy of the inside of a tri-fold advertising brochure for Vilana Financial. The brochure included both Plaintiff's image #2891 and Plaintiff's image #2258 (see exhibit N, attached). Upon information and belief, the brochure was self-published (and distributed) by Vilana between late 2004 and early 2005.

- 26 The Dex phone book ad (exhibit F), the Vilana brochure (exhibit N), and all other advertising by Vilana Financial, Inc. and Vilana Realty, Inc. were created and authorized by Andrew Vilenchik, the sole owner of both corporate entities. Andrew Vilenchik had a supervisory authority over the infringement of Plaintiff's images #2891 and #2258, and had a direct financial interest in the infringement.

CAUSE OF ACTION
Copyright Infringement

- 27 Paragraphs 1-26 are incorporated herein by reference.
- 28 Plaintiff has the exclusive right to reproduce, distribute, and publicly display copies of the works, image #2891 and #2258 (See 17 U.S.C. § 106).
- 29 Plaintiff did not grant defendant(s) the right to reproduce image #2891 or #2258.
- 30 Defendant(s) published image #2891 and #2258.
- 31 The defendant(s) have infringed on the Plaintiff's copyright to photograph #2891 and #2258; all use by the defendant(s) of the images are an infringement upon the Plaintiff's copyright.

PRAYER FOR RELIEF

follows: THEREFORE, Plaintiff prays for judgment against the defendant(s) as

- A Declaring that Defendants' unauthorized conduct violates Plaintiffs' rights under the Federal Copyright Act;
- B Immediately and permanently enjoining Defendants from copying or republishing any of Plaintiffs' copyrighted photographs;
- C Awarding Plaintiff statutory damages of up to \$150,000 for Defendant's willful infringement of Plaintiff's copyright to image #2258, pursuant to 17 U.S.C. § 504(c)(2);
- D Awarding Plaintiff the defendants' profits derived from their infringement of image #2891, in an amount to be determined at trial (estimated at \$200,000);
- E Awarding Plaintiff actual damages for defendants' copyright infringement of image #2891 in an amount to be determined at trial (estimated at \$50,000);
- F Awarding Plaintiffs their costs, reasonable attorneys' fees, and disbursements

in this action, pursuant to 17 U.S.C. § 505; and
G Awarding Plaintiffs such other and further relief as is just and proper.

Respectfully submitted,

Dated: February 12th, 2007

/s/Chris Gregerson
Chris Gregerson
Plaintiff, *pro se*
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